

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

No. CIV 18-0026 JB/GBW  
No. CR 15-3253 JB/GBW

JUANITA ROIBAL-BRADLEY,

Defendant/Petitioner.

**MEMORANDUM OPINION AND ORDER OF VOLUNTARY DISMISSAL**

**THIS MATTER** comes before the Court on: (i) the Defendant/Petitioner's Motion To Withdraw 2255 Without Prejudice, filed February 9, 2018 (CR Doc. 151)("Motion to Withdraw"); and (ii) the Defendant/Petitioner's Response To Inquiry of Conflict of Rule 28 USCA § 455, filed January 2, 2018 (CR Doc. 136)("Conflict Motion"). The Court will construe Defendant/Petitioner Juanita Roibal-Bradley's Motion to Withdraw as a notice of voluntary dismissal pursuant to rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, and the Court will enter Final Judgment.

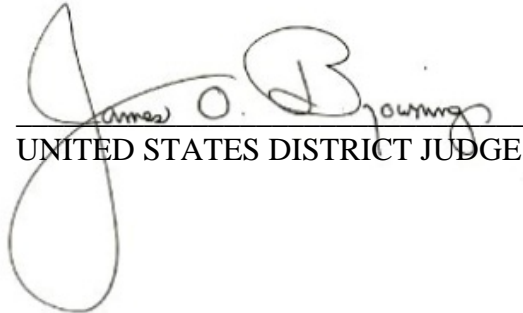
On January 2, 2018, Roibal-Bradley filed the Conflict Motion, which alleges that the Honorable Steven C. Yarbrough, United States Magistrate Judge, failed to disqualify himself sua sponte pursuant to 28 U.S.C. § 455, and requests a "proper and full inquiry be made into this alleged conflict." Conflict Motion at 2. The Honorable Gregory Wormuth, United States Magistrate Judge, informed Roibal-Bradley that, to the extent "she seeks to challenge the validity of her conviction and sentence based on Magistrate Judge Yarbrough's alleged failure to disqualify himself from her criminal proceeding, this challenge only may be raised, if at all, in a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255." Order Notifying

Defendant of Recharacterization of Defendant's Motion as Her First § 2255 Petition and Granting Leave to Amend at 1-2, filed January 12, 2018 (CR Doc. 140)("Recharacterization Order"). Pursuant to Castro v. United States, 540 U.S. 375 (2003), Magistrate Judge Wormuth notified Roibal-Bradley that he intended "to recharacterize her motion and afford Defendant an opportunity to withdraw the motion or to amend it to add additional claims." Recharacterization Order at 2. In response, Roibal-Bradley filed the Motion to Withdraw now before the Court, asking the Court to "withdraw her 'Response for inquiry into an alleged conflict of Rule 28 USCA § 455,' Document # 136," because she "did not intend said response to be a 2255 motion." Motion to Withdraw at 1.

Pursuant to rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, a party may "dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(1). See Rule 12 of the Rules Governing Section 2255 Proceedings For The United States District Courts (providing that the "Federal Rules of Civil Procedure . . . may be applied to proceedings under these rules."). Plaintiff/Respondent United States of America has not yet filed an answer in this action and, therefore, the Court will construe the Motion to Withdraw as a notice of voluntary dismissal under rule 41(a)(1)(A)(1). Because Roibal-Bradley has withdrawn her pro se Conflict Motion, that motion will not be recharacterized as a § 2255 motion, and any subsequent § 2255 motion that Roibal-Bradley may file will not be subject to the restriction on "second or successive" motions in §§ 2244 and 2255(h). Because there are no more claims before the Court, the Court will enter Final Judgment.

**IT IS ORDERED** that: (i) the Defendant/Petitioner's Motion To Withdraw 2255 Without Prejudice, filed February 9, 2018 (CR Doc. 151), is granted; and (ii) the

Defendant/Petitioner's Response To Inquiry of Conflict of Rule 28 USCA § 455, filed January 2, 2018 (CR Doc. 136), is voluntarily dismissed without prejudice pursuant to rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, and Final Judgment will be entered.



UNITED STATES DISTRICT JUDGE

*Parties:*

Juanita Roibal-Bradley  
FCC Victorville  
Adelanto, CA

*Plaintiff pro se*